

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

In re: :
 : Docket #17cr595
UNITED STATES OF AMERICA, :
 :
Plaintiff, :
 :
- against - :
 :
NICOLAS DE-MEYER, :
 : New York, New York
Defendant. : February 21, 2018

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PROCEEDINGS BEFORE
THE HONORABLE JAMES L. COTT,
UNITED STATES DISTRICT COURT MAGISTRATE JUDGE

APPEARANCES:

For Plaintiff: U.S. ATTORNEY'S OFFICE
SOUTHERN DISTRICT OF NEW YORK
BY: STEPHANIE LAKE, ESQ.
One Saint Andrew's Plaza
New York, New York 10007

For Defendant: FEDERAL DEFENDERS OF NEW YORK
BY: SABRINA SHROFF, ESQ.
SARAH NUDELMAN, ESQ.
52 Duane Street, Tenth Floor
New York, New York 10007

Transcription Service: Carole Ludwig, *Transcription Services*
141 East Third Street #3E
New York, New York 10009
Phone: (212) 420-0771
Fax: (212) 420-6007

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None					

E X H I B I T S

<u>Exhibit Number</u>	<u>Description</u>	<u>ID</u>	<u>In</u>	<u>Voir Dire</u>
None				

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THE COURT: Are we ready to proceed?

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THE CLERK: United States versus Nicolas De-

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Meyer. Counsel, please state your name for the record.

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MS. STEPHANIE LAKE: Good afternoon, Your Honor,

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Stephanie Lake for the United States. I'm standing in for

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my colleague Justin Rodriguez.

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THE COURT: Good afternoon, Miss Lake.

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MS. SABRINA SHROFF: Good afternoon, Your Honor,

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Sabrina Shroff and Sarah Nudelman on behalf of Mr. De-Meyer

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who's seated to my right.

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THE COURT: Good afternoon to all of you. So

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this defendant came from California?

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MS. LAKE: That's correct, Your Honor. He was

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arrested in California on January 16. He was presented in

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that district the next day, January 17. I understand that

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he arrived here yesterday evening.

THE COURT: Okay.

MS. LAKE: And the case has already been indicted. It's wheeled out to Judge Gardephe who's out of town this week, and he's referred it for presentment and arraignment.

THE COURT: All right, very well. Mr. De-Meyer, let me begin by information you of certain rights that you have. This may have been done at your prior proceeding as well, but I'm going to go through it again in an abundance of caution. First of all, you're not required to make any statements to the authorities. If you have made any statements in the past, you still have the right to remain silent in the future.

You also have the right to be represented by an attorney at all proceedings. If you can't afford an attorney, you have the right to request that the Court appoint one for you. I gather you made that request in Los Angeles and filled out a financial affidavit. Is that correct?

MR. NICOLAS DE-MEYER: Yes.

THE COURT: Okay, and so the Federal Defenders in California were appointed to represent you, and now that you're here in New York where you charged, Miss Shroff and

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her colleague will represent you here in this case going forward.

I don't know if you were told this, if you're a citizen of another country, you may request that a Government attorney or a federal law enforcement officer notify a consular official from that country that you've been arrested, and there may be an international agreement that requires such notification. Obviously, if you're a United States citizen, then that wouldn't apply to you, but I'm required by law to advise all defendants of that fact.

I do have the indictment in this case in front of me. It is a one-count indictment charging the defendant with interstate transportation of stolen property. Miss Shroff, have you received a copy of the indictment and reviewed it with Mr. De-Meyer?

MS. SHROFF: I have, Your Honor, and Mr. De-Meyer will waive its public reading.

THE COURT: Okay, and we're here for an arraignment as well, so does he wish to enter a plea of guilty or not guilty?

MS. SHROFF: Yes, Your Honor, he would enter a plea of not guilty.

THE COURT: Okay, a not guilty plea is so noted on the record. What is the Government's position with

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2 respect to bail in this matter?

3 MS. LAKE: Your Honor, the Government would
4 request that the current incarceration remain.

5 THE COURT: Okay, are you making an application
6 at this time?

7 MS. SHROFF: Your Honor, we'd like to make an
8 application, but the Government's position is that Judge
9 Gardephe is the district judge and hasn't referred the
10 matter for bail. So we're going to reach out to Judge
11 Gardephe's chambers tomorrow morning and ask that it be
12 referred to Magistrate's court and perhaps we could have a
13 time on Friday morning to come back --

14 THE COURT: Well, you can't have one on Friday
15 morning because I'm taking four pleas, but we'll find a
16 time. If it's referred, we'll find a time. It hasn't been
17 referred?

18 MS. LAKE: Your Honor, my understanding from
19 speaking with the AUSA who is assigned is that he, and I
20 think Miss Shroff had spoken with Judge Gardephe's chambers
21 after the arrest in California, and Judge Gardephe indicated
22 that Miss Shroff could make a written application if she so
23 wished but it should be made to him. Because Judge Gardephe
24 is out this week --

25 THE COURT: Oh, I see.

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MS. LAKE: -- I don't have any more information -

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THE COURT: You don't want to make a written application to Judge Gardephe?

MS. SHROFF: Well, I could, but it's far easier for me to make an oral application to you, but --

THE COURT: Well, that's true, although is this the kind of case where, even if I were to grant it, he would be detained until all conditions are met sort of thing or are you suggesting he be released today if your argument is successful?

MS. SHROFF: I think our position will be that he need not meet all conditions before he was released, but, look, I'm okay being courteous to the Government. Miss Lake is standing up for someone else. As long as we're able to do this tomorrow or the day after, I'm fine, but honestly I am - it's correct because he's the district judge and he hasn't technically --

(cross-talk)

THE COURT: Right, I can't address anything not referred to me. So we'll leave it that he'll be detained without prejudice to your making an application either to Judge Gardephe or to Mag court, whatever you all work out. If it's going to be tomorrow or Friday, you should just know

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both mornings are completely booked, so it'll have to be an afternoon schedule proceeding of some kind. You'll just need to talk to the clerk's office about that.

MS. SHROFF: That's fine.

THE COURT: But I'll obviously - if we need to do it this week, we'll find the time to do it. His liberty's at stake; that's an important issue obviously.

MS. SHROFF: I appreciate that, Your Honor.

THE COURT: Or, alternate - I mean maybe Judge Gardephe will do it Monday if he's back Monday. I don't know what his schedule is, but you all will be in touch with his chambers. If you need to schedule a proceeding in Magistrate's court because there's been a referral --

MS. LAKE: Yes, Your Honor.

THE COURT: -- then you'll talk to the clerk's office, but it won't be in the morning tomorrow or Friday.

MS. SHROFF: That's fine, Your Honor.

THE COURT: Okay. So other than that anything else we need to do today?

MS. LAKE: The Government moves to exclude time through Monday. There has been some amount of discovery that's been produced. I anticipate that Miss Shroff is not going to consent to the exclusion of time, however.

THE COURT: She cannot consent, but I can still

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2 exclude, but what is the basis for my excluding?

3 MS. LAKE: Providing defense an opportunity to
4 review discovery, the Government to continue producing
5 discovery, and the parties to discuss a potential
6 disposition of the case.

7 THE COURT: That sounds like boilerplate. Is any
8 of that really happening or is that just because you say it
9 in every case?

10 MS. LAKE: There has been some amount of
11 discovery that's been produced. I think that what Miss
12 Shroff will say is that she's already reviewed it and
13 doesn't need additional time to review it.

14 THE COURT: Is that what you're going to say?

15 MS. SHROFF: Well, it's the truth.

16 THE COURT: Well, I only want you to tell me what
17 the truth is.

18 MS. SHROFF: I have reviewed it.

19 THE COURT: Well, I need to have a legitimate
20 basis to exclude. We're talking about three days here. So
21 I don't think it's, you know, rock anybody's boat one way or
22 the other. I mean, in general, I think it's in both sides'
23 interest sometimes when times get, when time gets excluded.
24 Are you going to produce additional discovery to Miss Shroff
25 between now and Monday?

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MS. LAKE: If I'm able to, I will.

THE COURT: What does that mean?

MS. LAKE: The assigned AUSA is --

THE COURT: Well, that doesn't carry water with me.

MS. LAKE: -- out for personal reasons, and I will do my best to get in touch with him and get access to the material in order to produce additional discovery between now and Monday.

THE COURT: Is there any possibility that there is going to, in fact, be any discussion of a disposition between now and Monday?

MS. LAKE: If Miss Shroff is so inclined.

THE COURT: Why are you opposed to excluding three days of time? Just as a generic matter as well, and everybody's reflexes are taking their usual positions?

MS. SHROFF: No, it's a one-count indictment, so I did ask what would be a possible plea offer that the Government will give me. Zero. Right? Again, I'm trying to be truthful. If they're not going to give me a plea offer, I (inaudible). They're also not going to give me discovery between now and Monday. So I don't really have -- I don't have a reason to oppose the exclusion, but I also don't really have to give the exclusion --

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(interposing)

THE COURT: Well, if they're not going to give any discovery and there is no plea disposition, then I don't have a basis to exclude, do I?

MS. LAKE: It's a difficult position for me because I would love to say I can produce discovery --

THE COURT: With all respect, it's not for me to deal with your difficult position. Is there a basis under the speedy trial act that I can exclude? Doesn't sound like there's going to be any production of discovery, doesn't sound like there is a possibility of a disposition, at least meaningful discussions in the next three days. So I'm respectfully denying the application. You can make a further application before Judge Gardephe when you have a conference with him. Has one been scheduled?

MS. LAKE: Not yet, again, because he's out this week. The chambers requested that we send a letter requesting scheduling a conference.

THE COURT: Okay. All right, so I'm not going to exclude because I haven't heard a basis to exclude. What else?

MS. LAKE: Nothing more from the Government.

THE COURT: Anything else?

MS. SHROFF: No thank you.

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THE COURT: Okay, so perhaps I'll see you later
in the week. Have a good afternoon, Mr. De-Meyer.

MS. LAKE: Thank you.

(Whereupon the matter is adjourned.)

C E R T I F I C A T E

I, Carole Ludwig, certify that the foregoing transcript of proceedings in the United States District Court, Southern District of New York, United States of America versus Nicholas De-Meyer, Docket #17cr595, was prepared using PC-based transcription software and is a true and accurate record of the proceedings.

Signature _____

Carole Ludwig

Date: March 19, 2018